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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,256	06/15/2000	Yoshinori Kumasaka	SHC0012	8977

7590

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/23/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/595,256

Applicant(s)

KUMASAKA, YOSHINORI

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 15 June 2000 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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See Figures, page 2, lines 18-35, page 2, line 53-page 3, line 3, page 3, lines 27-41, page 3, line 45-page 4, line 7, page 5, line 35-page 6, line 48 and claims.

Claims 1-3: the front waist region is 14, 84, 68, the rear waist region is 16, 86, 70, the crotch region is 18, the waist opening is 24, the leg openings are 26, the covering zone is 14 and 68 minus 82, and/or 16 and 70 minus 82, the elastic zone is 82, 84, 64 and/or 82, 86, 66, the first member and second member as claimed on lines 15-19 of claim 1, claim 2 and claim 3 are disclosed explicitly or in the references set forth at page 2, lines 52-page 3, line 3, page 3, lines 27-41, page 4, lines 1-7, page 5, line 48-page 6, line 48 (It is noted that the EP reference to Taylor is the same as the Van der Wielen reference set forth on page 2). With regard to lines 19-22 of claim 1, as interpreted in light of the paragraph bridging pages 5-6 of the instant specification, the gathers are formed along the entire length when the second member is attached because the second member has gathers and extends along the entire length. The specification discloses that the length of the elastic zone is the same as that of the combined first and second members in the uncontracted state of the first member. The second member portion of '550 has gathers along the length thereof due to its being a composite elastic material, see portions of reference cited which teach the composition of the first and second members of the zone and claim 7 of '550, and the entire length of at least one of the waist regions will have gathers due to the attachment of the gathered second member to the upper edge of the covering zone. In the embodiment where there is a recoverable portion, gathering will also be formed due to recovery thereof. It is noted that the gathers in claim 1 and those in claim 3 are deemed to be the same.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1-23-03 has been entered.

2. The proposed drawings filed on 1-23-03 have been disapproved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

In Figure 1 there is a line near 18B. In Figure 2 there is white out around 18A and there are still brackets around and an 18 above one of the occurrences of 18B.

3. Claims 1-6 and 8 are objected to because of the following informalities: in claim 1, line 4, before "transversely", --the-- should be entered and on line 20, after "rear", --waist-- should be inserted.. Appropriate correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimberly Clark, PCT '550.

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Claims 4-6: It is noted that the covering area as claimed still does not need to encompass the entire circumferential direction of said at least one of said front and rear waist regions. It is also noted that the length in this claim is not required to be the initial length as is recited in claim 3. With regard to claim 6, the covering zone is stretchable due to the elasticity of the side sections 68, 70 but has a higher stress stretch in a portion of the covering zone extending along the elastic zone and of the same width than that of the elastic zone when stretched by 3-20 %, see , e.g., page 6, lines 10 and 43, i.e since a covering zone portion is inelastic the stretch stress thereof will necessarily be higher than that of the elastic zone which is elastic.

Claim 8: see page 7, lines 6-9, claims 1 and 4 of '550, and portions cited supra, as well as page 3, lines 6-7, i.e the leg band can be a composite elastic material.

6. Applicant's remarks with respect to the informalities have been noted. Applicant's remarks with regard to the prior art have been considered but are deemed nonpersuasive. Applicant has made certain conclusions from the prior rejection and/or the reference which are narrower in scope than the rejection or reference. The Examiner has provided a more detailed rejection in order to clarify the rejection. The gathering, as interpreted in light of Applicant's specification in the paragraph bridging pages 5-6, is due to the gathers in the combined first and second elements, the combined elements are attached in an unstressed condition, i.e. it has the same length in its uncontracted state as the length of the covering zone upper edge, to the upper edge of the covering zone. The reference's waist band composite material has gathers along the entire length due to the nature of the composite material. The reference, in some embodiments in

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which there is a recoverable portion, additionally forms gathers in the covering zone adjacent to the recoverable portion which recoverable portion retracts to its gathered condition. The instant claim language does not preclude such structure. Furthermore, the reference does not require more than one first member and one second member even in the embodiment of the waist band which has different elasticities. The material set forth in Applicant's arguments is merely one of the examples of suitable materials and other materials include the first member and second member as claimed. Furthermore it is well known in the art that different elasticities can be given to a single member, e.g., by varying the cross sectional area thereof along the length and/or width. Still furthermore different elasticities are not required, see claim 7 of '550. Finally the instant claims do not require any specific elasticity along the length of the first member.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other references show various elastic zones.

8. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

April 18, 2003

K.M. Reichle  
K.M. REICHEL  
PATENT EXAMINER